

APPENDIX A
EXISTING CONTRACT

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

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CIRCLE LINE - STATUE OF LIBERTY FERRY, INC.

STATUE OF LIBERTY NATIONAL MONUMENT

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CONTRACT NO. CC-STLI0001-89 EXECUTED August 15, 1989

COVERING THE PERIOD

April 1, 1989 THROUGH March 31, 2004

0984j

CONCESSION CONTRACT
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CONCESSION CONTRACT

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service and the Regional Director, North Atlantic Region, hereinafter referred to as the "Secretary," and Circle Line-Statue of Liberty Ferry, Inc., a corporation organized and existing under the laws of the state of New York, doing business as Circle Line-Statue of Liberty Ferry, Inc., hereinafter referred to as the "Concessioner":

The term "Superintendent" shall mean the Superintendent, Statue of Liberty National Monument.

W I T N E S S E T H

THAT WHEREAS Statue of Liberty National Monument is administered by the Secretary to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such area unimpaired for the enjoyment of future generations; and

WHEREAS the accomplishment of these purposes requires that facilities and services be provided for the public visiting the area and that all private interest shall be excluded except so far as may be necessary for the accomplishment of said purposes, including accommodation of the public; and

WHEREAS the United States has not itself provided all such necessary facilities and services and desires the Concessioner to establish and operate a passenger ferry service at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS the establishment and maintenance of such facilities and services involves a substantial investment of capital and the assumption of the risk of operating loss, it is therefore proper, in consideration of the

obligations assumed hereunder and as an inducement to capital, that the Concessioner be given assurance of security of such investment and of a reasonable opportunity to make a profit; and

WHEREAS pursuant to law the Secretary is required to exercise his authority hereunder in a manner consistent with a reasonable opportunity by the Concessioner to realize a profit on the operations conducted hereunder as a whole commensurate with the capital invested and the obligations assumed:

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 USC 1, 2-4), and October 9, 1965 (79 Stat. 969; 16 USC 20), and other laws supplemental thereto and amendatory thereof, the said parties agree as follows:

SEC. 1. TERM OF CONTRACT. (a) This contract shall supersede and cancel Concession Contract No. CC-1665-0-0003 effective upon the close of business March 31, 1989, and shall be for the term of FIFTEEN (15) years from April 1, 1989.

(b) The Concessioner shall undertake and complete an improvement and building program costing not less than \$2,000,000, as adjusted per project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Commerce's "Construction Review."

It is agreed that such investment is consistent with Section 3(a) hereof. Such improvement and building program shall include:

(1) The construction/purchase of two new passenger ferry boats, each with a passenger capacity of not more than 1,100. Such boats will not exceed 152 feet in length and 32 feet in beam, and will draft no more than 13 feet when fully loaded.

(2) Using a competent marine architect and marine engineer and shipyard, Concessioner will prepare plans and specifications to construct two vessels as described herein. Restrooms for staff and visitor use must be provided. Vessels must be equipped for operation and must be accessible to the handicapped on the first floor.

(c) The Concessioner shall start the improvement and building program on or before October 1, 1989, in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying said program forward reasonably under the circumstances. After approval in writing by the Secretary of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation as may be satisfactory to the Secretary, to demonstrate that such program is being carried forward, and shall complete and have it available for public use on or before May 1, 1990.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the improvement program for such stated periods as the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond its control warranting such relief.

SEC. 2. ACCOMMODATIONS, FACILITIES AND SERVICES. (a) The Secretary hereby requires and/or authorizes the Concessioner, during the term of this contract, to provide accommodations, facilities, and services for the public within Statue of Liberty National Monument as follows:

AUTHORIZED AND REQUIRED SERVICES:

1. Year-round, scheduled, passenger transportation by boat for park visitors to Liberty Island and to public areas of Ellis Island within Statue of Liberty National Monument. Service to be provided from Castle Clinton National Monument within Battery Park, New York, and from Liberty State Park, New Jersey, and return.

AUTHORIZED SERVICES:

1. Sale, on the ferry boats, of snack foods and refreshments.
2. Sale, on the ferry boats, of souvenirs and postcards specifically commemorative of or informative about the Statue of Liberty, Ellis Island, or providing information about other areas of the National Park System.
3. Sale, on the ferry boats and for consumption on the ferry boats, of beer subject to the Concessioner securing necessary alcoholic beverage licenses required by City and State regulations.

The Concessioner may provide services incidental to the operations authorized hereunder at the written request of the Secretary.

(b) In conducting the operations herein AUTHORIZED AND REQUIRED and as otherwise noted, the following additional minimum requirements are established:

(1) Vessel Requirements.

a At least four boats will be owned by the Concessioner, and two additional boats will be owned or leased to meet the requirements for service.

b All vessels or boats used in all operations conducted under the authority of this contract must be equipped and otherwise conform to the regulations of the US Coast Guard (a copy of certificate of inspection to be filed with the Superintendent) and/or other Governmental agencies having jurisdiction over this type of operation in the area. All vessels or boats used by the Concessioner carrying out the services herein authorized shall be satisfactory to the Secretary.

c All vessels will have a maximum passenger capacity of 1,100, will not exceed 152 feet in length, will not exceed 32 feet in beam, and will draft no more than 13 feet when fully loaded.

d For each vessel owned or leased, the Concessioner shall provide the Secretary with a comprehensive report on same prior to its being used in the operation, including identifying data and descriptive material, US Coast Guard certificates, and related safety inspections, as well as other information as may, in the Secretary's opinion, be necessary or desirable. The Secretary may in his discretion disapprove the use of any vessel or any leasing arrangements which may appear to him not to be in the public interest.

e In emergencies, the Concessioner may substitute temporarily for its regular vessels, boats or other vessels approved by the Superintendent. Such emergency periods shall be limited to ten (10) days unless further extended in writing by the Secretary.

f Vessels will be equipped with covered areas sufficient to provide all passengers protection from the weather. All cabin areas must be heated. This area will be accessible to mobility-impaired visitors.

g All vessels will have an operable restroom for each sex available for use at all times the boat is underway.

(2) Operating Requirements.

a Service will be year-round, seven days a week, closing on Christmas day only.

b Trips shall be on a specific schedule to be approved by the Superintendent.

c In no event will trips be on a less frequent basis than hourly, unless specifically approved in advance by the Superintendent.

d Out of park landing points and the services to be conducted at them are to be in accordance with agreements approved by the Secretary. The Secretary may require that the Service be a signatory party to all such agreements.

e PEAK VISITOR PERIOD service will normally include service every thirty minutes from both Liberty State Park and Battery Park to Liberty Island or Ellis Island as demand dictates and shuttle service between Liberty Island and Ellis Island every thirty minutes. PEAK VISITOR PERIOD will be defined by the Superintendent, and service may be modified by instructions from the Superintendent to respond appropriately to changing conditions of demand and carrying capacity of the islands.

f During other than the PEAK VISITOR PERIOD, the minimum standard of service shall be as required by the Superintendent but not less than loop trips from Battery Park, to Liberty Island, to Ellis Island, to Battery Park. Year-round ferry service from Liberty State Park is a goal that awaits certain improvements in the ferry facilities at Liberty State Park. With those improvements in place to the sole satisfaction of the Superintendent, and upon the written direction of the Superintendent, off-season service from Liberty State Park to both Liberty and Ellis Islands will be provided as part of the Battery Park loop trip or by separate loop service originating at Liberty State Park and shall be considered thereafter to be part of the minimum operating standard.

g The passenger fare will be the same for both New York and New Jersey departures. The ability to shuttle at least one way between Liberty and Ellis Islands will be maintained year-round. There will be no additional fee for the shuttle service beyond the initial ferry charge at the land based departure points.

n If the Concessioner fails to operate on the approved schedule of trips, it shall pay to the Secretary, as liquidated damages, the sum of Three Hundred Fifty Dollars (\$350) for each and every round trip which it fails to make. Such liquidated damages shall not be imposed for such failure because of: (1) accident, or circumstances beyond the control of the Concessioner as determined by the Secretary, provided a substitute vessel or boat is placed in service within a reasonable time; or (2) exceptionally severe weather conditions, when, in the judgment of the Master of the vessel or boat, navigation would be unduly hazardous.

i The Master or Captain of each vessel or boat used in providing service shall keep a "log book" of the daily trips made, showing for each trip the time of departure and arrival, the number of passengers carried, and any incident that may have occurred. The log book shall also show any scheduled trip missed and the reason therefor. The log book shall be available for inspection by the Secretary or his designated representative.

j The Concessioner shall equip each regular vessel or boat used in providing the services authorized and required with a public address system meeting the approval of the Secretary. The public address system will be so designated that the Secretary may affix thereto a tape deck, or similar device, to provide the public with such interpretive lecture service as he may deem appropriate. The Concessioner shall, upon request of the Secretary, operate the recording device during trips to and from Statue of Liberty National Monument. In the event that the Secretary prefers to provide such interpretive lecture service, the public address system shall be available to him to provide said service to the extent considered by him to be appropriate or desirable. If such interpretive lecture service is provided by the Secretary, the Concessioner shall also make available reasonable storage space for literature and supplies in connection therewith.

l The Concessioner shall furnish on regularly scheduled vessels transportation for Government materials and supplies without charge or compensation, provided that such freight or cargo shall not exceed the size and weight limitations established from time to time by mutual agreement between the Concessioner and the Superintendent. However, the right to make the final determination as to type, weight, and quantity limitations is reserved to the Secretary. Freight which exceeds such weight or size limitations shall be transported by the Concessioner at rates to be approved by the Secretary.

m The Concessioner shall furnish transportation to the employees of other concessioners and to the contractors of such concessioners and for materials and supplies used by such concessioners in the area; however, those other concessioners of Statue of Liberty National Monument are under no contract obligation to use this ferry service. Employee transportation shall be on regularly scheduled trips and at rates no more than the approved rate for government employees. Materials, supplies and freight shall be at rates and on schedules approved by the Secretary.

n The Concessioner shall furnish transportation to the employees of the National Park Service and for their dependents resident on Liberty and Ellis Islands and for their materials and supplies. The Concessioner shall furnish transportation for individuals on official National Park Service business, such as vendors, volunteers in the park, and artists in the park. Rates and the conditions of such service will be in accordance with Service policy and as further discussed in this contract.

o The regular vessels or boats owned or leased by the Concessioner that are used in providing the services authorized hereunder may be chartered by the Concessioner for other purposes than those provided for by this contract only if that use does not interfere or conflict with services being provided under the contract.

p All literature given to the public, including service and rate schedules and promotional material, must be approved in writing by the Secretary in advance. All such material will identify the service as, "an authorized concessioner of Statue of Liberty National Monument, National Park Service, Department of the Interior". The Concessioner shall cooperate with Statue of Liberty National Monument to provide timely information to its patrons regarding park programs and regulations concerning visitor use and resource protection.

q Texts prepared for advertisements of the ferry service and hand-out material concerning facilities and services provided under this contract will be submitted to the Superintendent by the Concessioner for approval prior to publication or use in order to assure consistency and compatibility with the purposes of Statue of Liberty national Monument and the National Park Service.

r If food and/or beverage service is provided on the vessel, Concessioner shall possess all necessary licensing and inspection certificates and insurance to operate food service facilities on board vessel. Concessioner will provide copies of these documents to the Park.

s If the National Park Service determines it to be necessary to require an advance ticketing service for visits to Statue of Liberty National Monument, the Concession shall implement such a system.

(3) Health and Safety Requirements. The Concessioner shall develop, with assistance from the National Park Service, a comprehensive written safety and occupational health program for its concession operation in accordance with National Park Service "Concessioner Loss Control Program" Guidelines.

(c) The Secretary reserves the right to determine and control the nature, type, and quality of the merchandise and services described herein as authorized and required to be sold or furnished by the Concessioner within the area. Operations under this contract and the administration thereof by the Secretary shall be subject to the laws of Congress governing the area and the rules, regulations, and policies promulgated thereunder, whether now in force or hereafter enacted or promulgated, including but not limited to the United States Public Health Service requirements. Concessioners must also comply with current applicable criteria promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions outlined in the National Park Service's Safety and Occupational Health Policy associated with visitor safety and health.

(d) During the term hereof and subject to satisfactory performance hereunder, the Concessioner is granted a right of first refusal to provide such additional concession accommodations, facilities and services of the same character as authorized and required hereunder as the Secretary may designate as necessary or desirable for accommodation and convenience of the public in that portion of the park in which a right of first refusal is granted, as delineated on Exhibit "C". If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional facilities, accommodations or services and/or declines or fails within a reasonable time to comply with the designation of the Secretary, then the Secretary, in his discretion, may authorize others under substantially the same terms and conditions to provide such designated accommodations, facilities, or services. This right of first refusal does not apply to concession operations in connection with lands hereafter acquired which expand the existing boundary of the area. Nothing contained in this section or elsewhere in this contract shall be construed as prohibiting or curtailing operations conducted in the area by other concessioners now authorized by the Secretary to provide accommodations therein for the public, including the successors or assigns of such concessioners, when approved by the Secretary.

SEC. 3. PLANT, PERSONNEL, AND RATES. (a) (1) The Concessioner shall maintain and operate the said accommodations, facilities, and services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with a reasonable opportunity to realize a profit on its operations hereunder commensurate with the capital invested and the obligations assumed.

(2) All rates and prices charged to the public by the Concessioner for accommodations, services, or goods furnished or sold hereunder shall be subject to regulation and approval by the Secretary. The Secretary shall exercise his decision making authority with respect to the Concessioner's rates and prices in a manner consistent with a reasonable opportunity for the Concessioner to realize a profit on its operations hereunder as a whole commensurate with the capital invested and the obligations assumed. Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations, services, or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The Concessioner will provide federal employees and others conducting official National Park Service business a reduced rate for essential transportation, not to exceed fifty cents (50¢) per round trip, accordance with procedures established by the Secretary.

(b) (1) The Concessioner shall require its employees who come in direct contact with the public to wear a uniform and a name badge, approved by the Superintendent, by which they may be known and distinguished as the employees of the Concessioner. The Concessioner shall require its employees to exercise courtesy and consideration in their relations with the public.

(2) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Secretary to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(3) The Concessioner shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, P.L. 93-112 as amended in 1978, (c) 41 CFR, Part 60-2, which prescribes affirmative action requirements for contractors and subcontractors, (d) the Age Discrimination in Employment Act of December 15, 1967 (P.L. 90-202), as amended by P.L. 95-256 of April 6, 1978, and (e) the Architectural Barriers Act of 1968 (P.L. 90-480), which requires government Contractors and Subcontractors to take affirmative action to employ and to advance in employment qualified handicapped individuals and to make facilities accessible to or usable by handicapped persons so that they will not be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by an Executive agency or by the United States Postal Service. The concessioner shall also comply with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and providing accessible facilities and services to the public and shall do nothing in advertising for employees which will prevent those covered by

these laws from qualifying for such employment and use of their facilities. Regulations heretofore promulgated are set forth in Exhibit "B" attached hereto and made a part hereof.

SEC. 4. GOVERNMENT LAND AND IMPROVEMENTS. (a) The Secretary hereby assigns for use by the Concessioner during the term of this contract, certain parcels of land and GOVERNMENT IMPROVEMENTS, if any, (as described in Exhibit "A" hereto) necessary to conduct the operations authorized hereunder. The Secretary reserves the right to withdraw such assignments or parts thereof at any time during the term of this contract if, in his judgment, (1) such withdrawal is necessary for the purpose of protecting visitors or area resources, or (2) the operations utilizing such assigned lands are terminated pursuant to Section 11 hereof. Any permanent withdrawal of assigned lands or improvements which are essential for conducting the operation authorized hereunder will be considered by the Secretary as a termination pursuant to Section 11 hereof. The Secretary shall compensate the Concessioner for any possessory interest in such withdrawn properties at book value as described in Section 12 hereof, or in the event that CONCESSIONER IMPROVEMENTS in which the Concessioner has a possessory interest are to be replaced by the Concessioner within the area, in accordance with fair value compensation for possessory interest described in subsection 12(b) hereof.

(b) "GOVERNMENT IMPROVEMENTS" as used herein means the buildings, structures, utility systems, fixtures, equipment, and other improvements upon the lands assigned hereunder, if any, constructed or acquired by the government and provided by the government for the purpose of this contract. The Concessioner shall have a possessory interest in improvements it makes to GOVERNMENT IMPROVEMENTS. In the event that such possessory interest is acquired by the government or a successor concessioner at any time, the Concessioner will be compensated for such possessory interest pursuant to Section 12 hereof. It is agreed that improvements to GOVERNMENT IMPROVEMENTS made by the Concessioner under the terms of this contract shall, for the purpose of determining possessory interest, be

depreciated by the Concessioner over the contract term remaining at the time that the improvements are made so that all improvements made to GOVERNMENT IMPROVEMENTS over the term of this contract will have a book value of zero (-0-) dollars at the expiration of the contract term.

(c) The Secretary shall have the right at any time to enter upon the lands and improvements utilized by the Concessioner hereunder for any purpose he may deem reasonably necessary for the administration of the area and the government services therein.

(d) The Concessioner may construct or install upon the assigned lands such buildings, structures, and other improvements as are necessary for the operations required hereunder, subject to the prior written approval by the Secretary of the location, plans, and specifications thereof. The Secretary may prescribe the form and contents of the application for such approval. The desirability of any project, as well as the location, plans, and specifications thereof, will be reviewed in accordance with the provisions of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966.

(e) If during the term hereof a GOVERNMENT IMPROVEMENT requires repairs and/or improvements that serve to prolong the life of the GOVERNMENT IMPROVEMENT to an extent requiring capital investment for major repair, such capital investment shall be borne by the Concessioner. Such expenditures shall be consistent with a reasonable opportunity for the Concessioner to realize a profit on its operations. Where capital improvements to government acquired or constructed facilities supporting the concession operation, including roads, parking, and utility systems, are determined by the Secretary to be necessary and economically feasible for the accommodation of park visitors they shall be made by the Concessioner. If the Secretary determines that the required improvements are necessary but economically infeasible for the Concessioner, such improvements may be made by the National Park Service subject to the availability of appropriated funds.

SEC. 5. MAINTENANCE. Subject to Section 4(e) hereof, the Concessioner will physically maintain and repair all facilities (both GOVERNMENT and CONCESSIONER IMPROVEMENTS, and including the Ellis Island bulkhead and Liberty Island pier and bulkhead) used in the operation hereunder, including maintenance of assigned lands and all necessary housekeeping activities associated with the operation to the satisfaction of the Secretary. In order that a high standard of physical appearance, operations, repair and maintenance be maintained, appropriate inspections will be carried out jointly by the Secretary and the Concessioner.

SEC. 6. CONCESSIONER'S IMPROVEMENTS. (a) "CONCESSIONER IMPROVEMENTS," as used herein, means buildings, structures, fixtures, equipment, and other improvements affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this contract (excluding improvements made to GOVERNMENT IMPROVEMENTS by the Concessioner), as follows: (1) such improvements upon the lands assigned at the date hereof as described in Exhibit "D" hereto; and (2) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary. CONCESSIONER IMPROVEMENTS do not include any interest in the land upon which the described structures are located.

(b) The Concessioner shall have a possessory interest in all CONCESSIONER IMPROVEMENTS recognized by this contract. Possessory Interest shall consist of all incidents of ownership except legal title, which shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege or right to operate or engage in any business or other activity and the use or enjoyment of any structure, fixture, or improvement in which the Concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of this contract, and may not be terminated or

taken for public use without just compensation as determined in accordance with Section 12. Wherever used in this contract, "possessory interest" shall mean the interest described in this paragraph. Performance of the obligations assumed by the Secretary under Section 12 hereof shall constitute just compensation with respect to the taking of a possessory interest in the circumstances therein described.

(c) Any salvage resulting from the authorized removal, severance, or demolition of a CONCESSIONER IMPROVEMENT, or any part thereof, shall be the property of the Concessioner.

(d) In the event that a CONCESSIONER IMPROVEMENT is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner shall promptly, upon the request of the Secretary, restore the site as nearly as practicable to a natural condition.

SEC. 7. UTILITIES. (a) The Secretary shall furnish utilities to the Concessioner for use in connection with the operations authorized hereunder, when available, at reasonable rates to be fixed by the Secretary in his discretion and which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Secretary in effect at the time of billing.

(b) Should any such service not be available or sufficient, the Concessioner may, with the written approval of the Secretary and under such requirements as shall be prescribed by him, secure the same at its own expense from sources outside the area or may install the same within the area subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on federal lands shall be acquired at its expense in accordance with any applicable state procedures and state law.

Such water rights, upon expiration or termination of this contract for any reason, shall be assigned to and become the property of the United States without compensation.

(2) Any service provided by the Concessioner under this section shall, if requested by the Secretary, be furnished to the government to such an extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the government for such service shall be approximately the average cost per unit of providing such service.

(3) All appliances and machinery to be used in connection with the privileges granted in this section, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Secretary.

SEC. 8. ACCOUNTING RECORDS AND REPORTS. (a) The Concessioner shall maintain an accounting system whereby the accounts can be readily identified with the System of Account Classification prescribed by the Secretary. The Concessioner shall submit annually, as soon as possible but not later than sixty (60) days after the 31st day of March, a financial statement for the preceding year or portion of a year as prescribed by the Secretary, and such other reports and data as may be required by the Secretary. If annual gross receipts are in excess of \$1 million, the financial statements shall be audited by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are between \$250,000 and \$1 million, the financial statements shall be reviewed by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the

auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. Financial statements accompanied by remarks such as "prepared from client records without audit" are unacceptable.

The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial reports are consistent to those included in the federal and state tax returns. If they are not, then a statement showing differences shall be included. The Secretary shall have the right to verify and copy for his own use all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioners, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b) Within ninety (90) days of the execution of this contract or its effective date, whichever is later, the Concessioner shall submit to the Secretary a schedule that identifies and provides details for assets in which the Concessioner claims a possessory interest. The schedule must describe these assets in detail showing for each such asset the date acquired, useful life, cost and book value.

(c) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of five (5) calendar years after the close of business year of the Concessioner and any subconcessioner, have access to and the right to examine any of the pertinent books, documents, papers, and records related to this contract, including federal and state income tax returns.

SEC. 9. FRANCHISE FEE. (a) For the term of this contract, the Concessioner shall pay to the Secretary for the privileges granted herein as follows:

(1) An annual fee for the use of any GOVERNMENT IMPROVEMENTS utilized by the Concessioner hereunder, if any. Such fee and assigned government buildings to be as set forth in Exhibit "A" hereto, but in no event shall the fee exceed the fair annual value of such GOVERNMENT IMPROVEMENTS as determined by the Secretary.

(2) In addition to the foregoing, a further sum equal to TEN PERCENT (10%) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b) The franchise fee shall be due on a monthly basis in such a manner that payment shall be received by the Secretary within 15 days after the last day of each month that the Concessioner operates. Such monthly payment shall include the annual use fee for assigned GOVERNMENT IMPROVEMENTS, as set forth in Exhibit "A" hereto, divided by the expected number of operating months, as well as the specified percentage-of-gross receipts for the preceding month. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the annual financial report. Overpayments shall be offset against the following year's franchise fees due. All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(d) (1) The term "gross receipts," as used herein, shall be construed to mean:

The total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted in this contract;

including gross receipts of subconcessioners as hereinafter defined; and including commissions earned on contracts or agreements with other persons or companies operating in the area;

But, excluding gross receipts from the sale of genuine United States Indian and native handicraft; intracompany earnings on account of charges to other departments of the operation, such as laundry; charges for employees' meals, lodgings, and transportation; cash discounts on purchases; cash discounts on sales; returned sales and allowances; interest on money loaned or in bank accounts; income from investments; income from subsidiary companies outside of the area; sale of property other than that purchased in the regular course of business for the purpose of resale; and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid governmental agencies; and amounts received as a result of an add-on to recover utility costs above comparable utility charges.

All monies paid into coin-operated devices, except telephones, whether provided by the concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the concessioner from coin-operated telephones shall be included in gross receipts.

(2) The term "gross receipts of subconcessioners" as used in subsection (d)(1) of this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever, and the subconcessioner shall report the full amount of all such receipts to the Concessioner within 45 days after the 31st day of March. The subconcessioner shall maintain an accurate and complete record of all items listed in subsection (d)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same

to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed in subsection (d)(1) in computing the franchise fee payable to the Secretary as provided for in subsection (a) hereof.

(e) Within ONE HUNDRED TWENTY (120) days after the end of the second and the fifth and of each five year period of this contract, at the instance of either party hereto, the amount and character of the franchise fees provided for in this section may be reconsidered. Such request shall be made in writing within 120 days after the end of the applicable contract year but cannot be made before the end of such year.

In the event that the Secretary and the Concessioner cannot agree upon an adjustment of the franchise fees within 120 days from the date of the request for renegotiation as made by either party, the position of the Concessioner must be reduced to writing within 30 days therefrom and submitted to the Secretary for a determination of appropriate fees consistent with the fair value of any assigned GOVERNMENT IMPROVEMENTS and the probable value to the Concessioner of the privileges granted by this contract based upon a reasonable opportunity for a profit in relation to both gross receipts and capital invested.

If desired by the Concessioner, an advisory arbitration panel will be established (one member to be selected by the Secretary, one by the Concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary appropriate franchise fees. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written determination of the Secretary as to franchise fees shall be final and conclusive upon the parties hereto.

Any new fees established will be retroactive to the commencement of the applicable period for which notice of reconsideration is given and be effective for the remaining term of the contract, unless subsequent negotiations establish yet a different franchise rate.

If new rates are greater than existing rates, the Concessioner will pay all back fees due with the next regular payment. If new rates are less than the existing rate, the Concessioner may withhold the difference between the two rates from future payments until he has recouped the overpayment.

Any new franchise fees will be evidenced by an amendment to the contract, unless based upon the written determination of the Secretary, in which event a copy of the determination will be attached hereto and become a part hereof, as fully as if originally incorporated herein.

SEC. 10. BOND AND LIEN. The Secretary may, in his discretion, require the Concessioner to furnish a surety bond acceptable to the Secretary conditioned upon the faithful performance of this contract, in such form and in such amount as the Secretary may deem adequate.

As additional security for the faithful performance by the Concessioner of all of its obligations under this contract and the payment to the government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the government shall have at all times the first lien on all assets of the Concessioner within the area.

SEC. 11. TERMINATION. (a) The Secretary may terminate this contract in whole or part for default at any time and may terminate this contract in whole or part when necessary for the protection of visitors or area resources.

The operations authorized hereunder may be suspended in whole or in part at the discretion of the Secretary when necessary to protect the health and safety of visitors and employees or to protect area resources.

Termination or suspension shall be by written notice to the Concessioner and, in the event of proposed termination for default, the Secretary shall give the Concessioner a reasonable period of time to correct stated deficiencies.

Termination for default shall be utilized in circumstances where the Concessioner has breached any requirements of this contract, including failure to maintain and operate the required accommodations, facilities, and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder.

(b) In the event of termination of this contract when necessary for the protection of visitors or area resources for default, the compensation to the Concessioner for such termination shall be as described in Section 12, "Compensation."

(c) In the event it is deemed necessary to suspend operations hereunder in whole or in part to protect the visitors or resources of the area, the Secretary shall not be liable for any compensation to the Concessioner for losses occasioned thereby, including but not limited to lost income, profit, wages, or other monies which may be claimed.

(d) To avoid interruption of service to the public upon the expiration or termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator, designated by the Secretary, of the CONCESSIONER IMPROVEMENTS and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall be entitled to an annual fee for the use of such improvements and personal property, prorated for the period of use, in the amount of the annual depreciation on such improvement and personal property plus a return on the book value of such improvements and personal property equal to the prime lending rate, effective on the date the temporary operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In this instance the method of depreciation used shall be either straight line depreciation or depreciation shown on federal tax returns.

SEC. 12. COMPENSATION. (a) Just Compensation: The compensation described herein shall constitute full and just compensation to the Concessioner from the Secretary for all losses and claims occasioned by the circumstances described below.

(b) Contract expiration or termination where operations are to be continued: If for any reason, including contract expiration or termination as described herein, and subject to the limitation on compensation for possessory interest contained in subsection (d) hereof, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and, at the time of such event the Secretary intends for substantially the same or similar operations to be continued by a successor, whether a private person, corporation or an agency of the government, (i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in CONCESSIONER and GOVERNMENT IMPROVEMENTS, if any, as defined under this contract, and all other property of the Concessioner used or held for use in connection with such operations; and (ii) the Secretary will require such successor, as a condition to the granting of a contract to operate, to purchase from the Concessioner such possessory interests, if any, and such other property, and to pay the Concessioner the fair value thereof.

The fair value of any possessory interest in GOVERNMENT IMPROVEMENTS shall be book value, as described in Section 12(c) hereof. In the event that such possessory interest in GOVERNMENT IMPROVEMENTS is acquired by a successor, the successor will not be permitted to revalue such possessory interest.

The fair value of possessory interest in CONCESSIONER IMPROVEMENTS shall be deemed to be the sound value of the improvement to which it relates at the time of transfer of such possessory interest, without regard to the term or other benefits of the contract. The sound value of any structure, fixture, or improvement shall be determined upon the basis of reconstruction cost

less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The fair value of merchandise and supplies shall be replacement cost, including transportation. The fair value of equipment shall be replacement cost less depreciation and obsolescence.

If the Concessioner and the successor, excepting government agencies, cannot agree upon the fair value of any item or items, either party may serve a request for arbitration upon the other party, and the fair value of the item or items in question shall be determined by the majority vote of a board of three arbitrators, selected as follows: Each party shall name one member of such board and the two members so named shall select the third member. If either party fails to appoint an arbitrator within 15 days after the other shall have appointed an arbitrator and served written notice, including the name and address of the arbitrator appointed, upon the other party, then the American Arbitration Association shall be requested by the Secretary to appoint an arbitrator to represent the party failing to make the appointment. The costs and expenses of the arbitrator appointed by the American Arbitration Association to represent the party failing to make the appointment shall be paid for by that party. The two arbitrators so named shall select the third member. If the third member is not selected within 15 days after the appointment of the latter of the other two arbitrators, the American Arbitration Association shall be requested by the Secretary to appoint the third arbitrator. In requesting that the American Arbitration Association appoint an arbitrator in the situations discussed above, the Secretary shall request that the person or persons appointed shall be impartial and specially qualified in commercial and real estate appraisal. The fair value determined by the Board of Arbitrators shall be binding on the parties. The compensation and expenses of the third member shall be paid by the Concessioner and one-half of the amount so paid shall be added to the purchase price. Before reaching its decision, the board shall give each of the parties a fair and full opportunity to be heard on the matters in dispute.

If the successor is a government agency and there is a dispute as to the fair value of any possessory interest, or other items, an advisory arbitration panel will be established at the request of the Concessioner (one member to be selected by the Secretary, one by the concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary an appropriate fair value. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written decision of the Secretary as to such fair value will be final and binding upon all parties.

(c) Contract expiration or termination where operations are to be discontinued: If for any reasons, including contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and the Secretary at the time chooses to discontinue such operations, or substantial part thereof within the area, and/or to abandon, remove or demolish any of the CONCESSIONER IMPROVEMENTS, if any, then the Secretary will take such action as may be necessary to assure the Concessioner of compensation for (i) its possessory interest in CONCESSIONER IMPROVEMENTS, and GOVERNMENT IMPROVEMENTS, if any, in the amount of their book value (unrecovered cost as shown in federal income tax returns); (ii) the cost to the Concessioner of restoring any assigned land to a natural condition, including removal and demolition (less salvage), if required by the Secretary; and (iii) the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination. Any such property that has not been removed by the Concessioner within a reasonable time following such determination shall become the property of the United States without compensation therefor.

(d) Contract termination for default for unsatisfactory performance where operations are to be continued: Notwithstanding any provision of this contract to the contrary, in the event of termination of this contract for default for failure to maintain and operate the "REQUIRED"

and/or "AUTHORIZED" accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder, compensation for the Concessioner's possessory interest in CONCESSIONER IMPROVEMENTS, if any, shall be at book value as described in Subsection 12(c) herein.

(e) Other Compensation. In the event of termination of this contract or portions thereof for the purpose of protecting visitors or area resources, the Concessioner may be compensated (in addition to the applicable compensation described in subsections (b) or (c) above) for such other costs as the Secretary, in his discretion, considers necessary to compensate the Concessioner for actual losses occasioned by such termination, including, but not limited to, and as the needs appear, cost of relocating from one building to another building, reasonable severance pay to employees that may be affected, penalties for early loan repayments, and reasonable overhead expenses required by such termination, but not for lost profit or other anticipated gain from the operations authorized hereunder or anticipated sale or assignment of the Concessioner's assets, including this contract or any of its benefits.

SEC. 13. ASSIGNMENT OR SALE OF INTERESTS. (a) (1) The Concessioner and/or any person or entity which owns a controlling interest (as herein defined) in a Concessioner's ownership (collectively defined as the "Concessioner" for the purposes of this section) shall not assign or otherwise sell or transfer responsibilities under this contract or the concession operations authorized hereunder, nor sell or otherwise assign or transfer (including, without limitation, mergers, consolidations, reorganizations, or other business combinations) a controlling interest in such operations, this contract, or a controlling interest in the Concessioner's ownership, as defined herein, without the prior written approval of the Secretary. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this contract for which this contract may be terminated immediately by the Secretary without regard to the procedures for termination for default described in Section 11 hereof, and

the Secretary shall not be obliged to recognize any right of any person or entity to an interest in this contract or to own or operate the operations authorized hereunder acquired in violation hereof.

(2) The Concessioner shall advise the person(s) or entity proposing to enter into a transaction described in Subsection (a)(1) above that the Secretary shall be notified and that the proposed transaction is subject to review and approval by the Secretary. The Concessioner shall request in writing the Secretary's approval of the proposed transaction and shall promptly provide the Secretary all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction.

(b) (1) The Secretary, in exercising the discretionary authority set forth herein, shall, among other matters, take into consideration the management qualifications of individuals or entities which would thereby obtain an interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the concession operations authorized hereunder in the public interest under the regulation of the Secretary.

(2) For purposes of this section, the term "controlling interest" in a Concessioner's ownership shall mean, in the instance of a corporate concessioner, an interest beneficial or otherwise of sufficient outstanding voting securities or capital of the Concessioner so as to permit exercise of substantial managerial influence over the operations of the Concessioner, and, in the instance of a partnership, limited partnership, joint venture, or individual entrepreneurship, any beneficial ownership of the capital assets of the Concessioner sufficient to permit substantial managerial influence over the operations of the Concessioner. The Secretary will determine, at the request of interested parties, whether or not an interest in a Concessioner constitutes a controlling interest within the meaning hereof.

(c) The Concessioner may not enter into any agreement with any entity or person except employees of the Concessioner to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without written approval of the Secretary at least 30 days in advance of such transaction.

(d) No mortgage shall be executed and no bonds, shares of stock, or other evidence of interest in or indebtedness upon the assets of the Concessioner, including this contract, in the area shall be issued, except for the purposes of installing, enlarging, or improving plant equipment and facilities, provided that such assets, including possessory interests or evidences of interests therein, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment, and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment transfer or encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Concessioner in such assets but shall not thereby acquire operating rights or privileges which shall be subject to the disposition of the Secretary.

SEC. 14. APPROVAL OF SUBCONCESSION CONTRACTS. All contracts and agreements (other than those subject to approval pursuant to Section 13 hereof) proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this contract in whole or part shall be considered as subconcession contracts and shall be submitted to the Secretary for his approval and shall be effective only if approved. However, agreements with others to provide vending or other coin operated machines shall not be considered as subconcession contracts. In the event any such subconcession contract or agreement is approved, the Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of March each year or portion of a year a sum equal to FIFTY PERCENT (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 9 of this contract.

SEC. 15. INSURANCE AND INDEMNITY. (a) General. The Concessioner shall save, hold harmless, defend, and indemnify the United States of America, its agents and employees for losses, damages, or judgments and expenses on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death, or property damage of any nature whatsoever and by whomsoever made, arising out of the activities of the Concessioner, his employees, subcontractors, or agents under the contract. The types and amounts of insurance coverage purchased by the Concessioner shall be approved by the Secretary.

At the request of the Secretary, the Concessioner shall, annually or at the time insurance is purchased, provide the Secretary with a Statement of Concessioner Insurance and Certificate of Insurance as evidence of compliance with this section and shall provide the Secretary thirty (30) days' advance written notice of any material change in the Concessioner's insurance program hereunder.

The Secretary will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(b) Property Insurance. The Concessioner will, in the event of damage or destruction, repair or replace those buildings, structures, equipment, furnishings, betterments and improvements, and merchandise determined by the Secretary to be necessary to satisfactorily discharge the Concessioner's obligations under this contract and for this purpose shall provide fire and extended coverage on both CONCESSIONER IMPROVEMENTS and assigned GOVERNMENT IMPROVEMENTS in such amounts as the Secretary may require during the term of this contract.

Those values currently in effect are set forth in Exhibit "E" to this contract. The exhibit will be revised at least every three years, or sooner if there is a substantial increase in values.

Such insurance shall provide for the Concessioner and the United States of America to be named insureds as their interest may appear. In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore, or replace CONCESSIONER and GOVERNMENT IMPROVEMENTS, equipment, furnishings, and other personal property hereunder, as directed by the Secretary. The lien provision of Section 10 shall apply to such insurance proceeds.

The Concessioner shall purchase the following additional property coverages in the amounts set forth in Exhibit "E":

Hull Insurance

(c) Additional Property Damage--GOVERNMENT IMPROVEMENTS, Property and Equipment. The following additional requirements shall apply to structures, all or any part of which are "GOVERNMENT IMPROVEMENTS" as defined in Section 4(b).

(1) The insurance policy shall contain a loss payable clause approved by the Secretary which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States.

(2) The use of insurance proceeds for repair or replacement of government structures will not alter their character as government structures and the Concessioner shall gain no possessory interest therein.

(d) Public Liability. The Concessioner shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operations authorized hereunder. Such insurance shall be in an amount commensurate with the degree of risk and the scope and size of such

activities authorized herein, but in any event, the limits of liability shall not be less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate and property damage of at least \$25,000 per occurrence and \$50,000 annual aggregate. If claims reduce available insurance below the required per occurrence limits, the Concessioner shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a comprehensive general liability policy, may be used to achieve the required limits.

From time to time, as conditions in the insurance industry warrant, the Secretary reserves the right to revise the minimum required limits.

All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America or shall provide that the United States of America is named an additional insured.

The Concessioner shall also obtain the following additional coverages at the same limits as required for the Concessioner's comprehensive general liability insurance unless other limits are specified below:

- (1) Product Liability.
- (2) Liquor Legal Liability.
- (3) Protection and Indemnity.
- (4) Automobile Liability.
- (5) Workers Compensation.

SEC. 16. PROCUREMENT OF GOODS, EQUIPMENT, AND SERVICES. In computing net profits for any purposes of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessioner or by any other device.

SEC. 17. DISPUTES. (a) Except as otherwise provided in this contract, any dispute or claim concerning this contract which is not disposed of by agreement shall be decided by the Director, National Park Service, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Concessioner.

The decision of the Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Concessioner mails or otherwise furnishes to the Director a written notification of appeal addressed to the Secretary. In accordance with the rules of the Board of Contract Appeals, the decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

In connection with any appeal proceeding under this clause, the Concessioner shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute or claim hereunder, the Concessioner shall proceed diligently with the performance of the contract or as otherwise required in accordance with the Director's decision.

Claims shall be considered hereunder only if a notice is filed in writing with the Director within 30 days after the Concessioner knew or should have known of the facts or circumstances giving rise to the claim.

(b) This section does not preclude consideration of legal questions in connection with decisions provided for in paragraph (a) above; provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) The provisions of this clause shall not apply to any claim of a precontractual nature nor of a noncontractual nature such as tort claims, nor with respect to discretionary acts or refusals to act by the

United States, including but not limited to the establishment of utility rates and rates to the public hereunder and terminations or suspensions of the contract for protection of visitors or area resources, nor to any other discretionary relief or action, nor in relation to action or inaction by the United States in its sovereign capacity. Decisions of the Director, National Park Service, concerning the matters mentioned in this subsection shall be final administrative determinations.

SEC. 18. GENERAL PROVISIONS. (a) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(b) The Concessioner is not entitled to be awarded or to have sole negotiating rights to any federal procurement or service contract by virtue of any provision of this contract.

(c) Notwithstanding any other provision hereof, the Secretary reserves the right to provide directly or through cooperative or other nonconcession agreements with nonprofit organizations any accommodations, facilities, or services to area visitors which are part of and appropriate to the park interpretive program.

(d) Any and all taxes which may be lawfully imposed by any state or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(e) No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(f) This contract may not be extended, renewed, or amended in any respect except when agreed to in writing by the Secretary and the Concessioner.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at Boston, Massachusetts, this 15th day of August, 1989.

CIRCLE LINE-STATUE OF LIBERTY FERRY, UNITED STATES OF AMERICA
INC.

By Frank P. Clair
Frank P. Clair
Vice President
Circle Line-Statue of Liberty
Ferry, Inc.

By Gerald D. Patten
for Gerald D. Patten
Regional Director
North Atlantic Region
National Park Service

ATTEST:

By Joseph A. Moann
JOSEPH A. Moann
Printed Name
SECRETARY
Title

LAND AND "GOVERNMENT IMPROVEMENTS" ASSIGNED

* * * * *

Improvement Group One

"GOVERNMENT IMPROVEMENTS" in Which The Government Holds 100% Of The Possessory Interest and which are assigned in accordance with Section 4:

Building No.	Description	Assigned from the effective date of the contract to the date or time period indicated	Monthly Fee
None	Ticket kiosk, within Castle Clinton NM	Term of contract	\$275
None	Liberty Island Main Dock, as shown on map for scheduled use for boat loading and unloading only. Not exclusive use. Not for overnight docking.	Term of Contract	None
None	Liberty Island Work Dock, as shown on map for scheduled use for boat loading and unloading only. Not exclusive use. Not for overnight docking.	Term of Contract	None
None	Ellis Island Dock Bulkhead as shown on map for scheduled use for boat loading and unloading only. Not exclusive use. Not for overnight docking.	Term of Contract	None

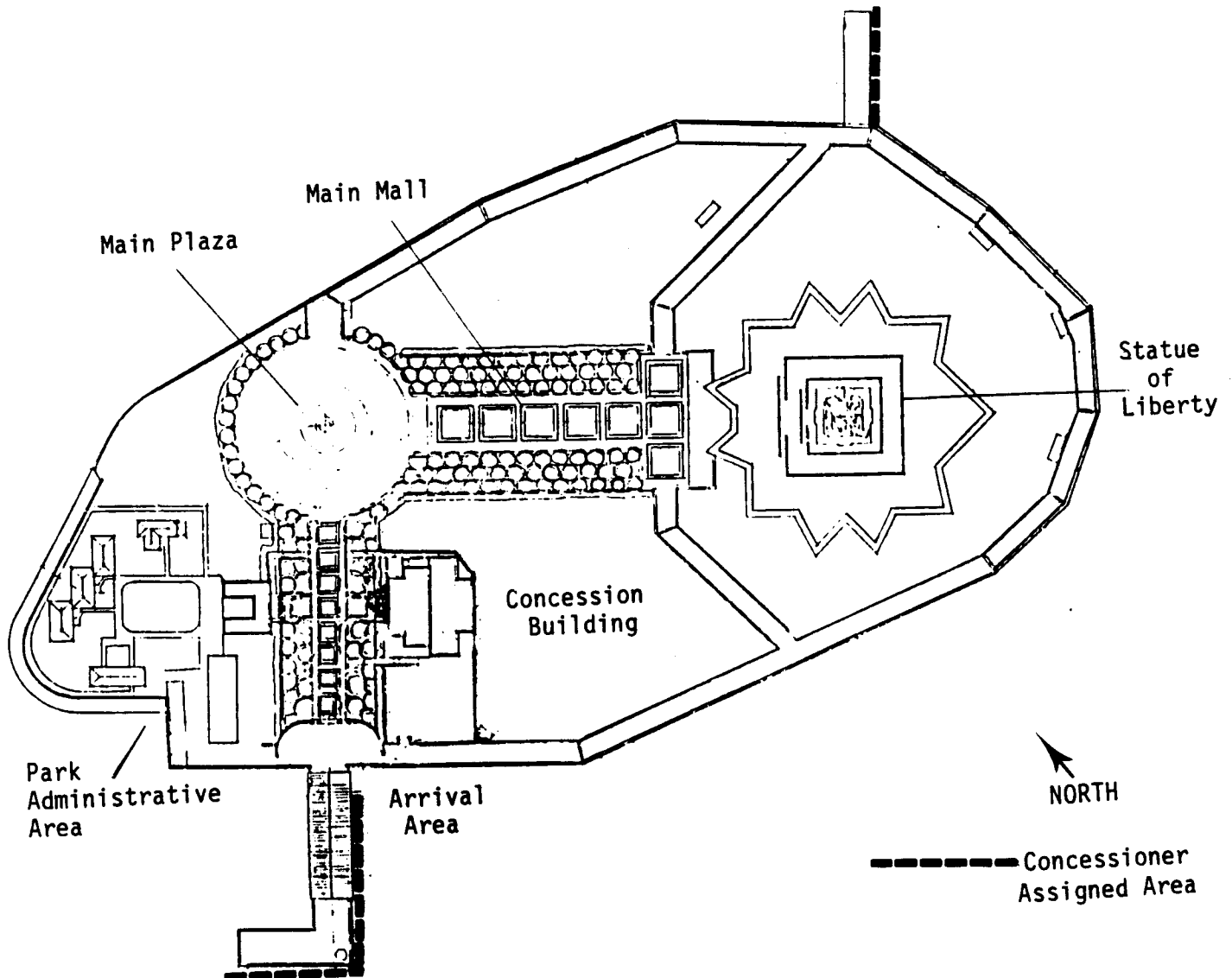
LAST ITEM

Total amount due pursuant to Contract Section 9:

\$275 per month

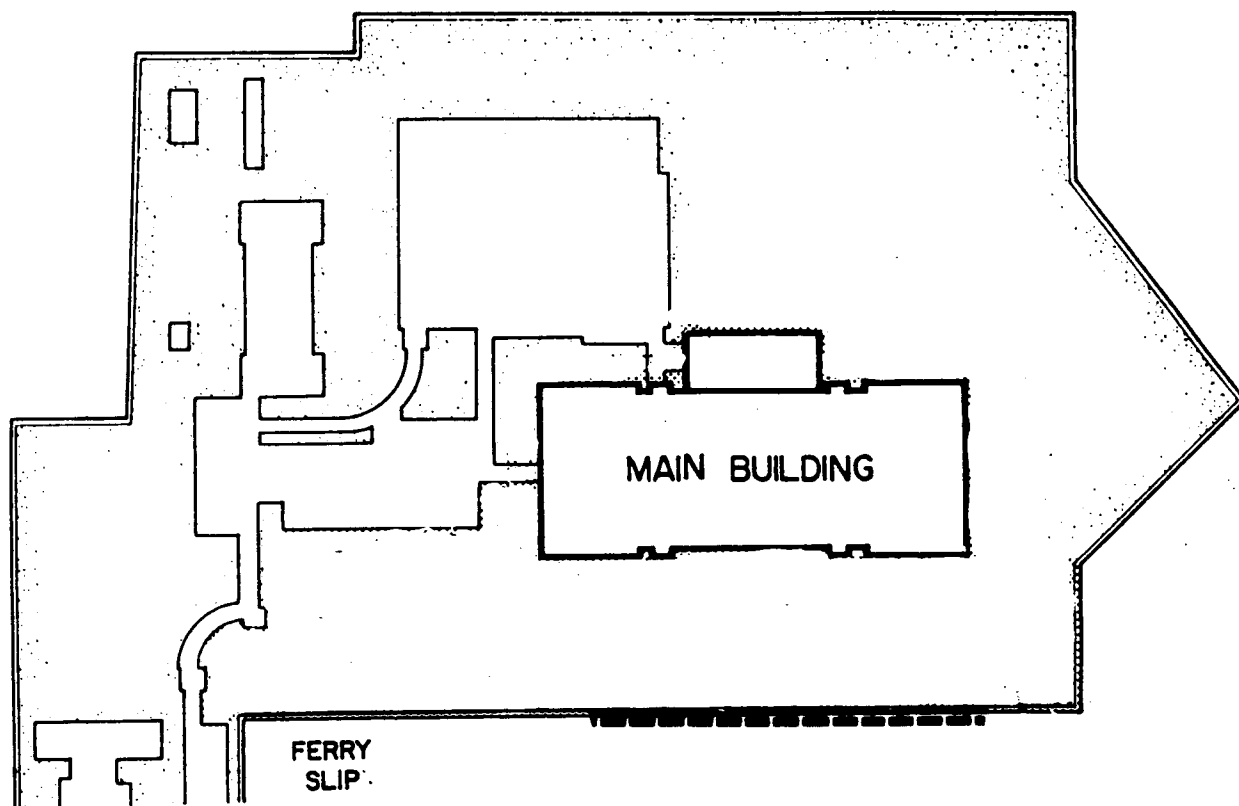
Land is assigned in accordance with Section 4(a) and as described on the following map(s):

MAP NUMBER ONE
LIBERTY ISLAND



**** STATUE OF LIBERTY NATIONAL MONUMENT ****
*** NATIONAL PARK SERVICE - NORTH ATLANTIC REGION ***

MAP NUMBER TWO
ELLIS ISLAND

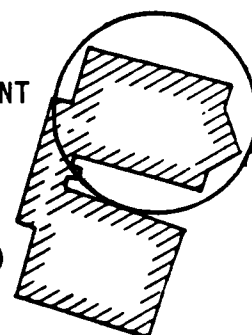


Concessioner
Assigned Area

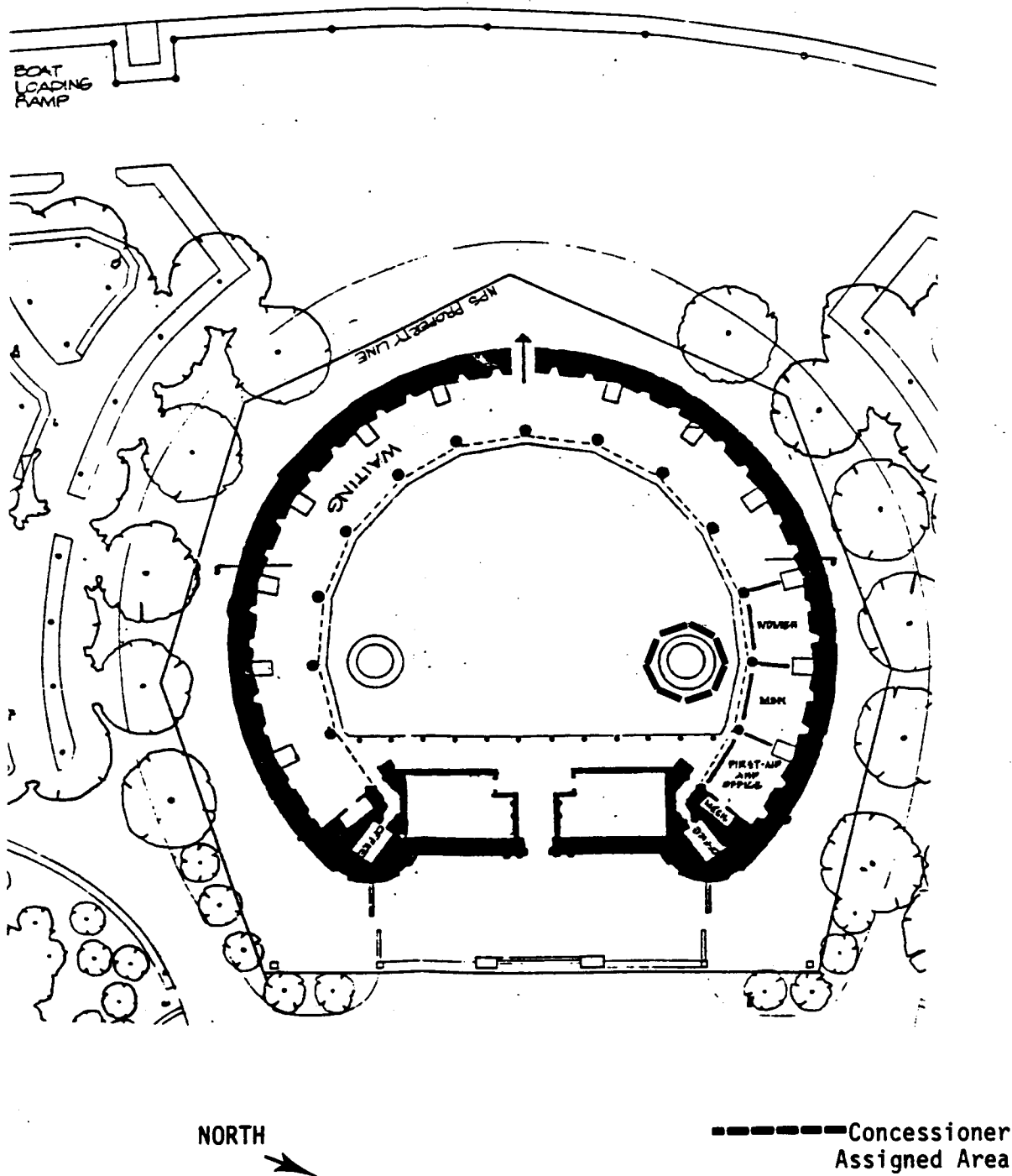


AREA OF
ENLARGEMENT
ABOVE

ELLIS
ISLAND



MAP NUMBER THREE
CASTLE CLINTON NATIONAL MONUMENT



MAP NUMBER FOUR
LIBERTY STATE PARK

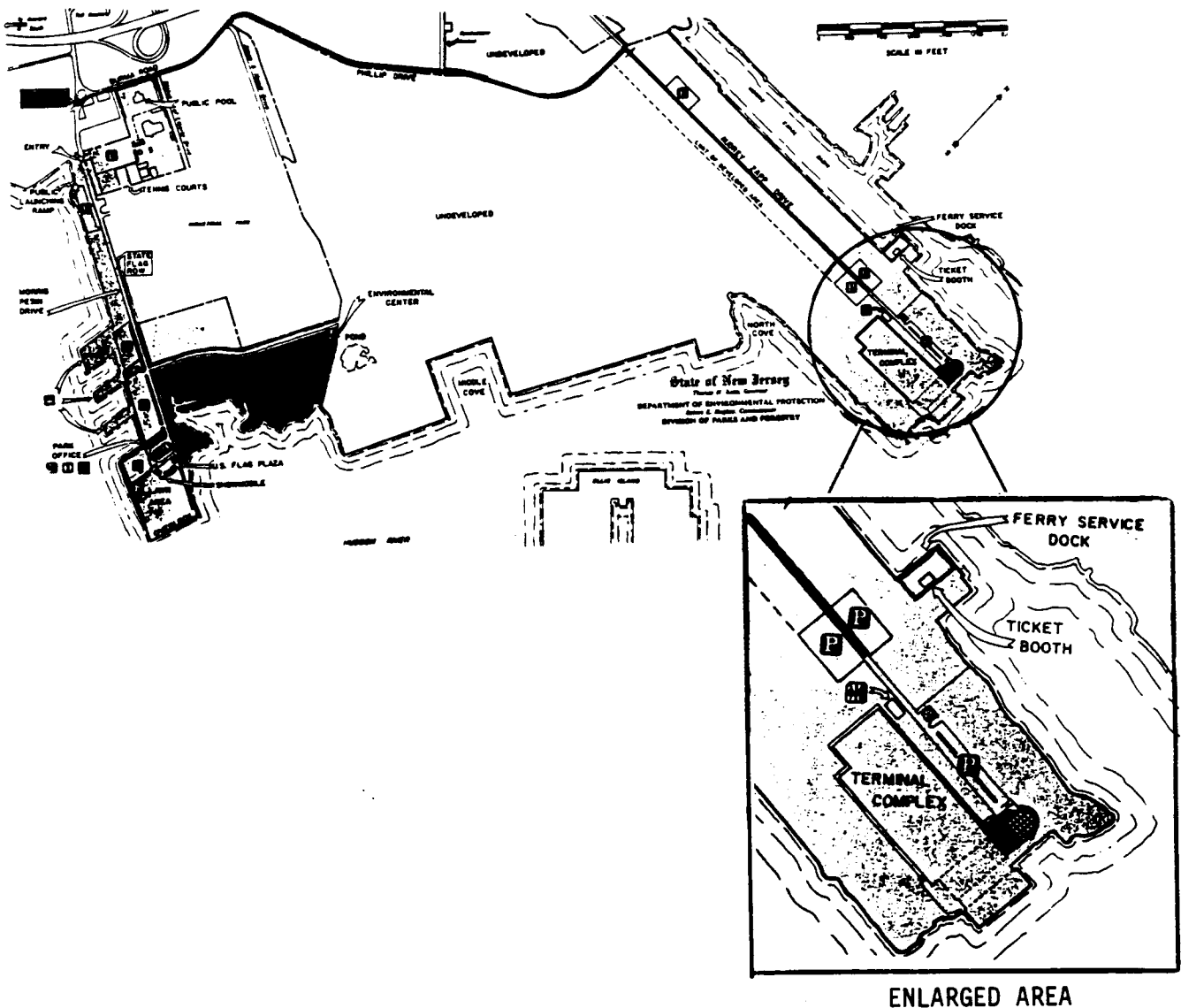


Exhibit "A" Approved, effective August 15, 1989

CIRCLE LINE-STATUE OF LIBERTY FERRY, UNITED STATES OF AMERICA
INC.

By Frank P. Clair
Frank P. Clair
Vice President
Circle Line-Statue of Liberty
Ferry, Inc.

By Gerald D. Patten
for Gerald D. Patten
Regional Director
North Atlantic Region
National Park Service

NONDISCRIMINATION

* * * * *

SECTION I
REQUIREMENTS RELATING TO EMPLOYMENT AND SERVICE TO THE PUBLIC

A. EMPLOYMENT: During the performance of this concession contract, the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract, every government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of

the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession contract or with any of such rules, regulations, or orders, this concession contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions A(1) through (8) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. FACILITIES:

(1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin, or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

SECTION II ACCESSIBILITY

Title V, Section 504 of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

PART A DISCRIMINATION PROHIBITED

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit, or service.

PART B
EXISTING FACILITIES

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

PREFERENTIAL RIGHTS TO ADDITIONAL SERVICES

(a right of first refusal)

* * * * *

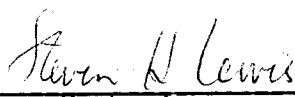
In accordance with subsection 2(c) of this contract, the concessioner is granted a preferential right to provide additional services in the areas described below.

DESCRIPTION:

These rights are to ferry transportation to Liberty Island and to the public areas of Ellis Island within Statue of Liberty National Monument from Castle Clinton National Monument within Battery Park, New York, and from Liberty State Park in New Jersey, and return.

This preferential right to additional services does not extend to providing services to contractors, employees, guests, or patrons of any persons or entities occupying portions of Ellis Island under separate authorization from the Secretary; such persons or entities may be authorized to establish their own services, including transportation, for their contractors, employees, guests or patrons.

Exhibit "C" Approved, effective August 15, 1989


for Gerald D. Patten
Regional Director
North Atlantic Region
National Park Service

"CONCESSIONER IMPROVEMENTS" Utilized
pursuant to
Section 6

* * * * *

Improvements as Described at Section 6(a) of this contract and Located within Statue of Liberty National Monument and Used for the Purposes of this Contract and in Which the Concessioner Holds 100% Of The Possessory Interest as Described in Section 6(b):

<u>Improvement Number</u>	<u>Description</u>
---------------------------	--------------------

NONE

Exhibit "D" Approved, effective August 15, 1989

CIRCLE LINE-STATUE OF LIBERTY FERRY, UNITED STATES OF AMERICA
INC.

By Frank P. Clair
Frank P. Clair
Vice President
Circle Line-Statue of Liberty
Ferry, Inc.

By Gerald D. Patten
for Gerald D. Patten
Regional Director
North Atlantic Region
National Park Service

CONCESSIONER BUILDINGS AND MAJOR PERSONAL PROPERTY
Both full and partial possessory interest

Item or Building Number	For Buildings: Percent of Conc Interest	Description	Insurance Replacement Value
NONE	NA	First Vessel as Described at Contract Section 2(b)(1)a.	\$ unknown
NONE	NA	Second Vessel as Described at Contract Section 2(b)(1)a.	\$ unknown
NONE	NA	Third Vessel as Described at Contract Section 2(b)(1)a.	\$ unknown
NONE	NA	Fourth Vessel as Described at Contract Section 2(b)(1)a.	\$ unknown
NONE	NA	Fifth Vessel as Described at Contract Section 2(b)(1)a.	\$ unknown
NONE	NA	Sixth Vessel as Described at Contract Section 2(b)(1)a.	\$ unknown

(With six adequate vessels available to the concessioner to provide this service, Hull Insurance will not be required until the National Park Service feels that loss of a vessel would make the concessioner unable to provide the required level of service or endanger the financial stability of the Concessioner.)

Exhibit "E" Approved, effective August 15, 1989

CIRCLE LINE-STATUE OF LIBERTY FERRY, UNITED STATES OF AMERICA
INC.

By Frank P. Clair
Frank P. Clair
Vice President
Circle Line-Statue of Liberty
Ferry, Inc.

By Gerald D. Patten
for Gerald D. Patten
Regional Director
North Atlantic Region
National Park Service

AMENDMENT NO. 1
CONCESSION CONTRACT NO. CC-STLI0001-89
CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.
STATUE OF LIBERTY NATIONAL MONUMENT

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and Circle Line-Statue of Liberty Ferry, Inc., a corporation organized and existing under the laws of the state of New York, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

WHEREAS, subsection 9(e) of said contract provides that within one hundred twenty (120) days after the end of the second and the fifth and of each five year period of this contract, at the instance of either party, the amount and character of the franchise fees may be reconsidered; and

WHEREAS, the Secretary has determined that as partial consideration for the privileges granted by this contract for the period beginning April 1, 1991 and ending March 31, 1994, the Concessioner shall make lump sum payments totaling \$1,425,000 to establish a "Capital Account"; and

WHEREAS, the Secretary has determined that the insurance replacement values of the facilities assigned be updated to reflect current value;

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. CC-STLI0001-89 is hereby amended as follows:

1. Amend Section 4(b) by adding the following parenthetical phrase after the words "GOVERNMENT IMPROVEMENTS" in line 6:

"(excluding improvements made from funds from any Section 10 accounts.)"

2. Amend the parenthetical phrase in Section 6(a), lines 5 and 6, to read as follows:

"(excluding improvements made to GOVERNMENT IMPROVEMENTS

*** STATUE OF LIBERTY NATIONAL MONUMENT ***
**** NATIONAL PARK SERVICE - NORTH ATLANTIC REGION ****

and improvements made from funds in any Section 10 accounts)"

3. Amend Section 9(e) to read as follows:

"(e) Within one hundred twenty (120) days after the end of the second and the fifth and of each five year period of this contract, at the instance of either party hereto, the amount and character of the franchise fees provided for in this section and/or contributions to any accounts described in Section 10 hereof (Section 10 contributions) may be reconsidered. Such request shall be made in writing within 120 days after the end of the applicable contract year but cannot be made before the end of such year.

In the event that the Secretary and the Concessioner cannot agree upon an adjustment of the franchise fee and/or Section 10 contributions within 120 days from the date of the request for renegotiation as made by either party, the position of the Concessioner must be reduced to writing within 30 days therefrom and submitted to the Secretary for a determination of appropriate fees and/or Section 10 contributions consistent with the fair value of any assigned Government Improvements and the probable value to the Concessioner of the privileges granted by this contract based upon a reasonable opportunity for a profit in relation to both gross receipts and capital invested.

If desired by the Concessioner, an advisory arbitration panel will be established (one member to be selected by the Secretary, one by the Concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary appropriate franchise fees and/or Section 10 contributions. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written determination of the Secretary as to franchise fees and/or Section 10 contributions shall be final and conclusive upon the parties hereto.

Any new fees and/or Section 10 contributions established will be retroactive to the commencement of the applicable period for which notice of reconsideration is given and be effective for the remaining term of the contract, unless subsequent negotiations establish yet a different franchise rate and/or Section 10 contribution.

If new rates and/or contributions are greater than existing rates and/or contributions, the Concessioner will pay all back fees and/or contributions with the next regular payment. If the new rates and/or contributions are less than the existing rates

and/or contributions, the Concessioner may withhold the difference between the two rates from future payments until he has recouped the overpayment.

Any new franchise fees and/or Section 10 contributions will be evidenced by an amendment to the contract, unless based upon the written determination of the Secretary, in which event a copy of the determination will be attached hereto and become a part hereof, as fully as if originally incorporated herein."

4. Add a new Section 10 as follows:

"SEC. 10. ACCOUNTS. (a) Government Improvement Account. No Government Improvement Account is included in this contract.

(b) Capital Account. (1) As partial consideration for the privileges granted by this CONTRACT, the Concessioner shall establish a "Capital Account" by which it will undertake, on a project basis, improvements which directly support the Concessioner's operations hereunder. Funds in the Capital Account, including interest earned thereon, belong to the Concessioner but shall be used by the Concessioner only for construction of qualified improvements approved by the Superintendent in accordance with priorities established by the National Park Service Regional Director. Projects estimated to cost over \$1,000,000 must be approved by the Director.

(b)(2) Improvements paid for with funds from the Capital Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by Sections 4 and 5 of this CONTRACT, or otherwise, from Concessioner funds exclusive of those funds contained in the Capital Account. Funds in the Capital Account shall not be used for purposes for which those Sections would apply. The Concessioner shall have no ownership, Possessory Interest or other interest in improvements made from Capital Account funds.

(b)(3) The Concessioner shall deposit In the Capital Account established pursuant to sub-section 10(b)(1) hereof, within fifteen (15) days after the date this amendment is executed, a lump sum payment of seven hundred and twenty-five thousand dollars (\$725,000) and, within forty-five (45) days, a further lump sum of seven hundred thousand dollars (\$700,000).

The funds in the said Capital Account shall be deposited into an interest bearing account(s) at a Federally insured financial institution(s): Provided, however, that funds in excess of the maximum federally insured amount(s) at said institution(s) shall be invested in the Concessioner's name, in short term, readily negotiable U.S. Treasury Bills. The account(s), U.S. Treasury Bills and their discounts, shall be maintained separately from all other Concessioner funds and copies of monthly Capital Account statements shall be provided to the Secretary. An interest charge will be assessed on overdue deposits for each thirty (30) day period, or portion thereof, that the deposit is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in the Treasury Fiscal Requirements Manual.

(b)(4) The Concessioner shall submit annually, no later than forty-five days, of the year following the Concessioner's accounting year a statement reflecting total activity in the Capital Account for the preceding accounting year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

(b)(5) Advances or credits to the Capital Account by the Concessioner are not permitted. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made. For all expenditures made for each project from Capital Account funds, the Concessioner shall maintain adaptable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

(b)(6) Upon the expiration or termination of this CONTRACT, or upon assignment or sale of interests related to this CONTRACT, the unexpended balance remaining in the Capital Account shall be expended by the Concessioner for approved Projects, or, shall be remitted by the Concessioner to the Secretary in such a manner that payment shall be received by the Secretary within fifteen (15) days after the last day of the Concessioner's operation. Any payment consisting of \$10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communications System. An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the

Treasury Fiscal Requirements Manual."

5. Existing Sections 10 through 18 of this contract shall be consecutively renumbered as Sections 11 through 19. Any references to these renumbered sections within the contract or any exhibits thereto shall be revised to reflect this renumbering.

6. Amend to update Exhibit "E", as attached.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at Washington, D.C., this 21st day of December, 1993.

CONCESSIONER:

UNITED STATES OF AMERICA:

By Joseph A. Moran

Joseph A. Moran
President
Circle Line-Statue of Liberty
Ferry, Inc.

By Roger G. Kennedy

for Roger G. Kennedy
Director
National Park Service

ATTEST:

By _____

Printed Name _____

Title _____

*** STATUE OF LIBERTY NATIONAL MONUMENT ***
**** NATIONAL PARK SERVICE - NORTH ATLANTIC REGION ****

BUILDING REPLACEMENT COST FOR INSURANCE PURPOSES

FOR OPERATING YEARS: STARTING 1994
AND ENDING When Superseded

The replacement costs set forth herein are established for the sole purpose of ensuring adequate property insurance coverage and shall not be construed as having application for any other purpose.

GOVERNMENT BUILDINGS
Both full and partial interest

Building Number	Percent of Government Interest	Description	Insurance Replacement Value
N/A	100%	Ticket Kiosk at Castle Clinton NM	\$ 128,000.
N/A	100%	Main Pier for docking Liberty Island	\$ 525,000.
N/A	100%	Shuttle Pier for docking at Liberty Island	\$ 225,000.
N/A	100%	Bulkhead and pier for docking at Ellis Island	\$ 350,000.

****STATUE OF LIBERTY NATIONAL MONUMENT****
 NATIONAL PARK SERVICE - NORTH ATLANTIC REGION

CONCESSIONER BUILDINGS AND MAJOR PERSONAL PROPERTY
Both full and partial possessory interest

Item or Building Number	Percent of Concessioner Interest (bldg)	Description	Insurance Replacement Value
1	N/A	Miss Liberty	\$ unknown
2	N/A	Miss Circle Line	\$ unknown
3	N/A	Miss Freedom	\$ unknown
4	N/A	Miss Gateway	\$ unknown
5	N/A	Miss Ellis Island	\$ unknown
6	N/A	Miss New York	\$ unknown
7	N/A	Miss New Jersey	\$ unknown

With seven adequate vessels available to the concessioner to provide this service, Hull Insurance will not be required until the National Park Service feels that loss of a vessel would make the concessioner unable to provide the required level of service or endanger the financial stability of the concessioner.

This exhibit, supersedes Exhibit "E" approved, August 15, 1989.

Approved effective December 21, 1993

CIRCLE LINE - STATUE OF LIBERTY
FERRY, INC.

UNITED STATES OF AMERICA

By Joseph A. Moran
Joseph A. Moran
President
Circle Line Statue of
Liberty Ferry, Inc.

By Roger G. Kennedy
Roger G. Kennedy
Director
National Park Service

****STATUE OF LIBERTY NATIONAL MONUMENT****
NATIONAL PARK SERVICE - NORTH ATLANTIC REGION

AMENDMENT NO. TWO
CONCESSION CONTRACT NO. CC-STLI0001-89
CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.
STATUE OF LIBERTY NATIONAL MONUMENT

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and Circle Line-Statue of Liberty Ferry, Inc., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as the "Concessioner:"

W I T N E S S E T H:

WHEREAS, subsection 9(e) of said Contract provides that within one hundred twenty (120) days after the end of the second and the fifth and of each five year period of this Contract, at the instance of either party, the amount and character of the franchise fees may be reconsidered; and

WHEREAS, the Secretary has determined that as partial consideration for the privileges granted by this Contract for the period beginning April 1, 1994 and ending at the close of business, November 30, 1994, the Concessioner shall make, in addition to its contractually scheduled payments, a lump sum payment totaling \$325,000 to the Capital Account established by Amendment No. One to this Contract; and

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. CC-STLI0001-89 is hereby amended as follows:

2. The first paragraph of SEC. 10.(b) (3) shall be deleted and the following shall be substituted therefor:

(b) (3) The Concessioner shall deposit in the Capital Account established pursuant to sub-section 10(b) (1) hereof, within fifteen (15) days after the date this Amendment is executed, an additional lump sum payment of THREE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$325,000); and effective December 1, 1994, shall deposit in said account, on a monthly basis, as such monies accrue, five percent (5%) of the Concessioner's gross receipts from fares and freight until the sum of such deposits shall equal \$2,500,000. Upon attaining the \$2,500,000 total, the five percent of gross fares and freight fee shall be either rejustified for accrual towards a new multi-year facility improvement plan with approval by the Regional Director or, shall be paid to the United States as are the percentage fees under Sec. 9. In the latter case, Sec. 9. will be amended so that the total percentage fee applied to fares and freight shall be fifteen percent (15%).

In all other respects the said Contract, as amended, is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to hereunder subscribe their names and affix their seals.

Dated at Washington, DC, this 17th day of May, 1995.

CONCESSIONER:

UNITED STATES OF AMERICA:

By Joseph A. Moran
Joseph A. Moran
President
Circle Line-Statue of Liberty
Ferry, Inc.
4-26-95

By Roger G. Kennedy
Roger G. Kennedy
Director
National Park Service
*As his
for*

ATTEST:

By William R. Moran
William R. Moran
Printed Name
Secretary
Title

AMENDMENT NO. THREE
CONCESSION CONTRACT NO. CC-STLI0001-89
CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.
STATUE OF LIBERTY NATIONAL MONUMENT

THIS AGREEMENT, made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and Circle Line-Statue of Liberty Ferry, Inc., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract No. CC-STLI0001-89 on August 15, 1989, whereby the Concessioner was authorized to provide accommodations, facilities and services for the public within Statue of Liberty National Monument during the period April 1, 1989, through March 31, 2004; and

WHEREAS, the Secretary has coordinated maintenance of deep water access and egress routes for Liberty and Ellis Islands, along which, the Secretary has directed the Concessioner to navigate its vessels to provide transportation activities required by the said Contract; and

WHEREAS, said Concession Contract has been amended by Amendment No. 1 dated December 21, 1993, and Amendment No. 2 dated May 17, 1995; and

WHEREAS, by Amendments No. 1 and No. 2, the Secretary and the Concessioner have reconsidered and agreed upon the amount and character of the franchise fees pursuant to Section 9(e) and within the meaning of the Concessions Policy Act (79 Stat. 969; 16 U.S.C. 20) Section 3(d); and

WHEREAS, Amendment No. 1 established a Capital Account and Amendment No. 2 increased the amount the Concessioner paid into said Capital Account; and

WHEREAS, the primary purpose of the Capital Account is to fund dredging and spoil disposal therefrom for deep water docking of Concessioner ships; and

*** STATUE OF LIBERTY NATIONAL MONUMENT ***
**** NATIONAL PARK SERVICE - NORTHEAST REGION ****

WHEREAS, the accumulated funds in the Capital Account are inadequate to fund dredging and spoil disposal projects which must be undertaken to avoid closure of water access to the said Islands, water access being the sole means of park visitor access to and egress from the Islands; and

WHEREAS, in order to cope with these emergency conditions, the Secretary desires to reconsider the fees and account contributions provided for in the said Contract as amended; and

WHEREAS, the Concessioner is agreeable to the said reconsideration on the terms and conditions hereinafter set forth:

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. CC-STLI0001-89 is hereby further amended effective upon the last date of execution as follows:

1. Section 1, Term of Contract, is further amended by renumbering existing subsection (d) as subsection (e), and adding a new subsection (d), as follows:

(d) The Concessioner shall undertake a project to dredge access and egress routes to Liberty and Ellis Islands beginning on or about April 1997, including disposal of dredge spoil. Expenditures for the project shall be limited to funds accumulated in the capital account established under Section 10 (added by Amendment No.1 to this Contract). Undertaking this dredging project shall not obligate the Concessioner to be responsible for future dredging projects, unless agreed to in a subsequent contract or amendment to this Contract.

2. Amend Section 9(a)(2) by deleting the first paragraph of said subsection and replacing said paragraph in its entirety with the following:

"(a)(2) In addition to the foregoing, a further sum equal to TEN PERCENT (10%) of the Concessioner's gross receipts, excluding fare and freight receipts from the execution date of this Amendment, and, in addition, beginning May 1, 1999, TEN PERCENT (10%) of said passenger fare and freight gross receipts.

3. Amend Section 9(b) to include the following proviso at the end of the first sentence thereof:

Provided, that such monthly payments shall not be applicable to required flat lump sum

*** STATUE OF LIBERTY NATIONAL MONUMENT ***
**** NATIONAL PARK SERVICE - NORTHEAST REGION ****

payments.

4. Amend the first paragraph of Section 9(e), as previously amended by Amendment No. 1 to this Contract) by adding the following new sentence at its end:

Notwithstanding the foregoing, execution of Amendment No. 3 to this Contract concluded reconsideration of the amount and character of franchise fees provided for in this section and/or contributions to any accounts described in Section 10 hereof (Section 10 contributions) for the five-year period, May 1, 1997, through April 30, 2002; within one-hundred twenty (120) days after five years from the date of final execution of said Amendment No. 3, at the instance of either party hereto, the amount and character of the franchise fees provided for in this section and/or contributions to any accounts described in Section 10 hereof (Section 10 contributions) may be reconsidered pursuant to this Section 9(e).

5. Amend Section 10(b)(1) by deleting said subsection in its entirety and replacing it with the following:

(b) Capital Account. (1) As partial consideration for the privileges granted by this Contract, the Concessioner shall establish a "Capital Account" by which it will undertake, on a project basis, improvements which directly support the Concessioner's operations hereunder. Funds in the Capital Account, including interest earned thereon, belong to the Concessioner subject to the restrictions set forth herein. The Concessioner shall withdraw funds from said "Capital Account" for the purpose of payment of dredging expenses incurred under Section 1(d) as amended herein. Funds in the Capital Account shall be used by the Concessioner only for said dredging expenses as approved by the Superintendent, except that funds accrued that exceed the cost of the dredging project shall be used to construct qualified improvements that directly support the Concession operation. All expenditures from said Capital Account shall be approved by the Superintendent in accordance with priorities established by the National Park Service Regional Director. Projects estimated to cost over \$1,000,000 must be approved by the Director. Funds contained in the Capital Account prior to the effective date of Amendment No. 3 to this Contract shall be included in the Capital Account described herein.

6. Amend Section 10(b)(3) , as previously amended, by deleting the first paragraph and replacing it with the following:

*** STATUE OF LIBERTY NATIONAL MONUMENT ***
*** NATIONAL PARK SERVICE - NORTHEAST REGION ***

(b)(3) The Concessioner shall make the following payments into the Capital Account:

(A) (i) From the execution date of Amendment No. 3 to this Contract through March 31, 1997, deposit (within fifteen days after the end of the preceding month) into the Capital Account FIFTEEN PERCENT (15%) of its passenger fare and freight gross receipts for the preceding month;

(ii) For the period 4/1/97 through 3/31/99, deposit into the Capital Account the following:

(a) On 4/1/97, the sum of FIVE MILLION DOLLARS (\$5,000,000)

(b) Within 45 days after 3/31/98, FIFTEEN PERCENT (15%) of its gross receipts from fares and freight (gross receipts) for the year prior to 3/31/98 in excess of Eighteen and One-half Million Dollars (\$18,500,000).

(c) Within 45 days after 3/31/99, FIFTEEN PERCENT (15%) of its gross receipts for the year prior to 3/31/99 in excess of Eighteen and One-half Million Dollars (\$18,500,000).

(d) Provided, however, if the gross receipts in either or both of the years defined in (b) and (c) above are less than Eighteen and One-half Million Dollars (\$18,500,000), the deposits for the months succeeding 3/31/99 shall be offset until the amount of gross receipts on which such deposits are calculated shall equal the amount by which the gross receipts were less than Eighteen and One-Half Million Dollars (\$18,500,000) in either or both of said years.

(iii) Beginning May 1, 1999 the Concessioner shall deposit in said Capital Account on a monthly basis, five percent (5%) of the Concessioner's gross receipts from fares and freight for the previous month.

(B) If for any reason beyond the Concessioner's control its operations are interrupted for three (3) or more consecutive days during the period May 1, 1997,

through April 30, 1999, the effective day for the beginning of the additional consideration provided for in subsection (A) (iii) hereof and subsection 9(a)(2) relating to passenger fare and freight receipts shall be delayed for a period of time equal to the periods of interruption(s) in operations.

In all other respects the said Contract, as amended, is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at BOSTON, MA 18th day of MARCH, 1997
Philadelphia, PA.

CONCESSIONER

UNITED STATES OF AMERICA

By Joseph A. Moran

Joseph A. Moran
President
Circle Line-Statue of Liberty

By Marie Rust

Marie Rust
Regional Director, Northeast Region
National Park Service

ATTEST:

By Robert F. Barry

Printed Name

Title _____

Date _____